

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS**

Mail Stop Appeal Brief - Patents
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APPEAL BRIEF
IN SUPPORT OF APPELLANT'S APPEAL
TO THE BOARD OF PATENT APPEALS

Applicants (hereinafter "Appellants") hereby submits this Brief in support of an Appeal from a decision of a Final Office Action mailed September 15, 2006, and sustained in an Advisory Action mailed November 14, 2006, for the above-referenced case. Following a Notice of Panel Decision from a Pre-Appeal Brief Review, Appellant requests that the Board of Patent Appeals consider the following in support of allowance of the invention as presently recited in the claims.

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I. REAL PARTY IN INTEREST

The real party in interest of the above-referenced U.S. Patent application is Intel Corporation of 2200 Mission College Boulevard, Santa Clara, California 95052, to whom the application has been assigned.

II. RELATED APPEALS AND INTERFERENCES

To the best of Appellant's knowledge, there are no prior or pending appeals, interferences, or judicial proceedings related to the subject matter of this appeal that will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Of originally filed Claims 1-20, 16-20 remain unamended, with claims 1-15 canceled. The rejection of claims 16-20 is the subject of this appeal.

IV. STATUS OF AMENDMENTS

Following the first substantive Office Action of March 23, 2006, Appellant filed its first response on June 23, 2006. Appellant filed its second response on October 31, responsive to the Final Office Action of September 15, 2006. A Pre-Appeal Brief Request for Review was filed by Appellant on March 15, 2007. None of the above resulted in any amendments to the claims. A copy of the claims on appeal is attached hereto.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The claims are summarized below, using references in parentheses to supporting portions of the Specification. These references should be construed as only representative of the teachings that illustrate and support the claimed features. The cited portions are thus sufficient to support the claim, but are not necessarily the exclusive support in the Specification as filed for such claim features.

16. (Original) A method, comprising:

outputting stored media information based on an associated index file (Fig. 2, par. [0029]), (Fig. 1, par. [0017], [0020]);
receiving an annotation request at a point in the index file (par. [0030]);

receiving and storing annotation information associated with the annotation request (par. [0033]); and

modifying the index file at the point at which the annotation request was received to reference the stored annotation information (par. [0034]).

17. (Original) The method of claim 16, further comprising:

asking for a type of the annotation information before the receiving and storing (par. [0031]).

18. (Original) The method of claim 16, further comprising:

detecting a reference to the stored annotation information in the index file (Fig. 3, par. [0036]);

retrieving annotation information associated with the reference (par. [0037]); and

selectively combining the media information and the annotation information (par. [0038] – [0039]).

19. (Original) The method of claim 18, further comprising:

repeating the outputting stored media information based on an associated index file before the detecting a reference to the stored annotation information (par. [0036]).

20. (Original) The method of claim 18, wherein the selectively combining includes:

determining whether the annotation information should be displayed (par. [0036]), and combining the media information and the annotation information if the determining determines that the annotation information should be displayed (par. [0037]).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

CLAIM REJECTIONS UNDER 35 U.S.C. § 101

Claims 16-20 stand rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. In particular, the Final Office Action, at page 2, interprets the claims as “not being limited to tangible embodiments. The claimed method is interpreted as software per se, abstract idea or mental construct that is not tangibly embodied on a computer readable medium or hardware.” According to the Office Action, the claims fail to set forth physical structures or materials including hardware or a combination of hardware and

software, to produce a useful and tangible result (quoting the utility requirement of section 101, MPEP § 2107 and In re Fisher 76 USPQ2d at 1230. See also citations on page 3, to Benson, 175 USPQ at 676-77, as well as other case law).

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 16-20 stand rejected as being obvious in view of U.S. Patent Publication 2004/0236830 of Nelson (“Nelson”) in view of U.S. Patent No. 5,600,775 to King (“King”). According to the Final Office Action beginning at the bottom of page 3 and continuing to page 5, Nelson teaches the limitations of claim 16 at page 1, paragraph [0006] through page 2, paragraph [0014] as an annotation management system that stores annotation data and provides it in real time to clients of a video conference session. The Office Action finds that all claim limitations “are obvious variants” of what is taught in Nelson, except for *modifying the index file at the point at which the annotation request was received to reference the stored annotation information.* The Office Action looks to King, and particularly column 2, line 1 through column 30, line 30, and Fig. 1, to find there that video and annotations are stored separately with an indexing scheme that relates the annotations to the video frames. On full motion video playback, the annotations of King are displayed on the originally annotated frames, and the annotations can be manipulated independently of the video information. The Office Action finds that an indexing scheme allows the annotations and the video to be recombined at the receiving station.

The Office Action concludes with finding that it would have been obvious to modify Nelson’s teaching to include a means of modifying an index of the media information, to reflect a presence of the annotation information using the teachings of King. One of ordinary skill in the art would have been motivated to do so as “King and Nelson are allegedly from the same field of endeavor of media annotation control and/or management, and it is desirable to provide an annotation tool that allows for reductions in production time, more effective use of resources, and greater communication in general while creating multimedia products or other large scale indexed data files in real time interaction among developers or users (see King, col. 1, lines 25-67). “

A further issue for the Board is to consider the rejection of dependent claim 17 as being obvious over the combination of Nelson and King, for the reasons given at page 14 of the Office Action. Claim 17 recites the further operation of *asking for a type of the annotation information before the receiving and storing*. This, according to the Office Action, is taught in King at col. 2, line 15 through col. 15, line 35 and Fig. 1., where King allegedly discloses

“the video and annotations are stored separately that provides an indexing scheme relates the annotations to the video frames, wherein types of annotations, which can be created, include free-hand bitmap drawings, text, and audio data. When audio data is used, an icon is used as the graphical element of the annotation data structure, which can be displayed over the indexed data structure to indicate presence of an audio annotation. Also, the annotation graphical element can be positioned on the screen overlaying the indexed data structure using a pointer device which inputs coordinate data for the annotation data structure.”

A further issue for the Board is the rejection of dependent claim 18 as being obvious, also in view of Nelson and King. According to the Office Action at page 15, this claim “incorporates substantially similar subject matter as cited in claims 1, 7, 12 and 16 [discussed] above ... and is similarly rejected along the same rationale.” Claim 18 recites the further operations of *detecting a reference to the stored annotation information in the index file, retrieving annotation information associated with the reference, and selectively combining the media information and the annotation information*.

VII. ARGUMENT

In this section, argument is presented first for the utility rejections under §101, and then for the obviousness rejection under §103. For the utility rejection, all claims are argued together, seeing that the utility question raised in the Office Action applies across all claims. As to the art rejection, however, the claims have been arranged into three groups, each being argued separately.

A. CLAIM REJECTIONS UNDER 35 U.S.C. § 101

This rejection appears to require that the claims must be explicitly limited to a computer, else the claim risks being interpreted as an abstract thought process. This, however, is an improper test for subject matter eligibility. In a Memorandum issued April 12, 2007, by Deputy

Commissioner John J. Love of the U.S. Patent and Trademark Office, the current examination guidelines for determining what is patentable subject matter has been clarified in a way that obviates the instant rejection. According to the Memorandum, as long as the specification describes a tangible, concrete and useful result, it is not necessary to cite this result in a claim to comply with Section 101. A copy of the two page Memorandum is attached here as Evidence Appendix. Here, Appellant's Specification describes the purpose of the method recited in the claims as being a machine-implemented technique for annotating media content with user-specified information, using media devices. Accordingly, claim 16 properly recites statutory subject matter.

Nevertheless, the arguments made by Appellants in response to the two Office Actions in this case are reiterated for completeness as follows. First, the rejection appears to use a "machine implemented test", which is not a proper test for subject matter eligibility. See again Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (22 November 2005), Annex III "Improper Tests For Subject Matter Eligibility," section d) "Machine Implemented Test": "A finding that a claim fails to recite a computer-implemented process is not determinative in whether that claim passes muster under Sec. 101." This continues to be clear legal error.

Further, processes (including their component steps or acts) are *prima facie* statutory. See the quoted portion of 35 U.S.C. §101 on page 19 of the Final Office Action: "... any new and useful process . . ." The undersigned knows of no statutory or case law requirement that a process or method claim state exactly what physical structures are to be used to perform its component steps or acts. This is because there is no such requirement. If the Board knows of such a requirement, the Board is respectfully requested to document it. Otherwise, the Board should withdraw this legally erroneous position.

The proper focus for the Examiner should be whether the claimed invention has "specific and substantial" utility (see M.P.E.P. §2107.02). As noted therein, "In most cases, an applicant's assertion of utility creates a presumption of utility that will be sufficient to satisfy the utility requirement of 35 U.S.C. 101" M.P.E.P. §2107.02(III)(A). In this context, method claims 16-20

plainly have well-established, specific and substantial utility in view of the disclosure of, for example, the media stream 105, media device 110, input device 170, and display device 180 in Fig. 1 of the specification (and their associated description).

The Board should require that, if the Examiner persists in a §101 rejection, he should address and factually support his various burdens under M.P.E.P. §2107.02(IV). These are listed on pages 2100-31 and 2100-32 of the M.P.E.P., 8th Ed., Rev. 5, Aug. 2006. A *prima facie* showing of lack of utility has not been made to date, and if the Examiner persists in this rejection, he should do Applicants the courtesy of following the requirements (note the repeated use of the word "must") laid out by M.P.E.P. §2107.02(IV) so that the rejection may be properly addressed.

B. CLAIM REJECTIONS UNDER 35 U.S.C. § 103

The obviousness rejection will be addressed on two grounds. First, as an evidentiary and legal matter, the Final Office Action is insufficient on its face to establish an initial case of obviousness as required under the rules. This problem exists for all of claims 16-20, in that the Office Action has failed to identify which elements of the claims read on a particular component of Nelson or King. Instead, the Summary sections and other large contiguous portions of these references are cited, without further explanation or elaboration. This amounts to an unsupported, general allegation that "it's obvious from something that is in there somewhere." This does not meet the Examiner's evidentiary burden of establishing a *prima facie* case of obviousness.

Such general citation also forces Applicants to guess at exactly which components of Nelson et al. and King et al. the Examiner considers to teach or suggest the claimed limitations. Appellants are willing to help in determining the scope of protection, but also ask that the Board kindly remind the Examiner that under 37 C.F.R. § 104(c)(2) "the particular part [of the reference] relied on must be designated as nearly as practicable." Appellants respectfully request that, in any subsequent actions containing art rejections, all claim limitations be read upon "particular part[s]" of the references.

The second ground of Appellant's argument regarding the obviousness rejection is based on a good faith effort made by Appellant to advance prosecution (despite the evidentiary and legal insufficiency of the obviousness rejection) by carefully reviewing the art references.

Essentially, the rejection is improper because the references as combined fail to teach or suggest all of the claim limitations, grouped as follows. However, before addressing each group of claims, a brief overview of certain aspects of each prior art reference is given.

U.S. Patent Publication No. 2004/0236830 of Nelson et al.

This reference describes the enabling of real time annotation features that may be viewed by participants of a video conference system. Virtual pointer functionality is provided so that a video conference participant may emphasize, highlight, or distinguish a portion of the user interface that is displayed by each of the clients associated with the video conference participants. Annotation data generated by the participants during the session is stored by a server. Properties associated with the annotation data include the time of each annotation in the session and the origin of the annotation data, and are managed by the system. Nelson, par. [0029].

An annotation management system synchronizes annotations across all participants that are conversing. The annotation information is identified through the insertion of indices and markers into stored video conference data, thereby enabling reconstructions of the stored video conference data based upon the annotation information. The annotation information includes virtual pointer information that refers to mouse moves, submitted from one client to a server and then distributed out to other participants so that each may view the mouse moving within the associated client's display. Nelson, par. [0046]. This is referred to as the real time presentation of annotation data. Nelson, par. [0068].

The annotation data may be stored as part of the captured video conference data on a storage server. Associated properties of the annotation data are also stored. For example, the time of the annotation, the participant initiating it, and the type of media being annotated, may be captured and stored in an event database. The properties of the annotation data which has been stored is associated with the stored video conference data. For instance, markers may be inserted into the stored video conference data in order to identify where certain annotations took place. Thus, a meeting summarization may be created from the stored data based upon the properties of the annotation data. Nelson, par.1 [0069].

U.S. Patent No. 5,600,775 to King et al.

This reference describes how full motion digital video frames or other indexed data structures are annotated with text, graphics, and digital audio, without modification to the original video information. The video and annotations are stored separately. An indexing scheme relates the annotations to the video frames. On full motion video playback, the annotations are displayed on the originally annotated frames. The technique involves displaying a video file using a display routine, and selecting in response to user input, an indexed data structure to be annotated from the video file being displayed. Next, an annotation data structure is created, without modifying the selected data structure. For instance, the annotation data structure may include a graphical element for display overlaying the selected data structure and an indication of an index value for the selected data structure.

The annotation data structure is stored in an annotation memory, apart from the video file (of indexed data structures). During playback, the annotation memory is monitored to detect annotation data structure for indexed data structures that are currently being displayed. If such a structure is detected, a graphical element overlies the indexed data structure on the display, without modifying the indexed data structure.

Group I: Claim 16

As explained above under Section VI: Grounds of Rejection to be Reviewed on Appeal, the Office Action recognizes that Nelson does not teach *modifying the index file at the point at which the annotation request is received to reference the stored annotation information*, where the claim also requires that *stored media information be output based on the associated index file*. Neither Nelson nor King teach or suggest such a limitation. Instead, King states, at col. 2, lines 17-31 (with emphasis added):

The method includes displaying the file of indexed data structures using a file display routine, and selecting in response to user input an indexed data structure to be annotated from the file of indexed data structures being displayed. **Next, an annotation data structure is created** in response to user input using an annotation routine **without modifying the selected data structure**. The annotation data structure includes a graphical element for display overlaying the selected data structure and an indication of an index value for the selected data structure. **The annotation data structure is stored in an annotation file apart from the file of indexed data structures. During playback, the annotation file is monitored** to detect annotation data structures for indexed data structures currently being displayed.

The cited portion of King et al. teaches creating and monitoring a separate annotation data structure; it does not teach or suggest "modifying an index file," as set forth in claims 16-20. Thus, a *prima facie* case of obviousness has not been established for claims 16-20, and the 35 U.S.C. § 103(a) rejection should be withdrawn.

The rejection points to Nelson in general, rather than any specific component, as allegedly teaching the other limitations of claim 16, including *outputting stored media information based on an associated index file*. In the interest of moving prosecution forward, the undersigned has reviewed Nelson carefully and has been unable to ascertain what components of Nelson actually teach or suggest such a limitation. As mentioned above, Nelson focuses on providing real time annotations for media content during a video conference session, namely by detecting an annotation made in one client and communicating data corresponding to this annotation to other clients of the video conference session. It is not however clear how this would teach one of ordinary skill in the art that *stored media information be outputted based on an associated index file*.

It is also unclear how Nelson would reasonably teach or suggest *receiving an annotation request at a point in the index file and receiving and storing annotation information associated with the annotation request*. Nelson does describe how annotation data may be stored "as part of the captured video conference data". It is not at all clear, however, that *an annotation request is received at a point in the index file*. In other words, it is not clear in Nelson whether the system is aware of an annotation request being received with respect to a particular point in an index file. The Office Action reflects no attempt by the Examiner to understand how one of ordinary skill would view Nelson as teaching Appellant's claimed *index file*. Without making such a determination, it is improper to then look to another reference, namely King, as allegedly teaching how this *index file* can be modified as recited in Appellant's claim.

Even if we assume for the sake of argument that Nelson does teach an *index file* that is associated with the outputting of stored media information, and that annotation requests are understood as being received at various points in the index file, it would not have been obvious to modify such an index file using the teachings of King, because King only discusses how an

annotation data structure is created (in response to user input). There is no understanding in King that *stored media information be outputted based on an associated index file, and the index file be modified at the point at which an annotation request was received to reference the stored annotation information.*

According to King, the created annotation data structure includes a graphical element for overlaying a selected data structure, and an indication of an index value for the selected data structure. King describes how to store the annotation data structure, apart from the file of indexed data structures. However, King does not reasonably inform one of ordinary skill in the art that *an index file that is used and modified* as recited in Appellants claim 16 be contemplated. The Final Office Action fails to make such a connection and therefore improperly rejects Appellants claim 16.

Group II: Claim 17

Claim 17 depends from claim 16 and further requires *asking for a type of the annotation information before the receiving and storing*, i.e., before receiving the annotation request and storing annotation information associated with that request. The Office Action again makes no finding specific to this claim limitation, but rather merely points to the general discussion of an annotation management system of Nelson and the annotation techniques of King, to find it all obvious. Again, Appellant is left wondering where to look for such a teaching. Although the undersigned does not claim to be able to do the Examiner's job, in the interest of moving prosecution forward, the following analysis of Nelson and King is provided. It is respectfully requested that the Board urge the Examiner to verify these findings before withdrawing the rejection based on Nelson and King.

Nelson discloses a video conferencing system that can detect mouse movements by any client, and distributes such annotation to other clients in the conference in real time. Nowhere is it taught that the system asks for a type of annotation, before receiving and storing it. The system in King also does not make such an inquiry.

Group III: Claims 18-20

This dependent claim further requires that *a reference to the stored annotation information in the index file be detected, and information associated with the reference be*

retrieved and selectively combined with the media information. Thus, for instance, this claim would cover the playback phase during which media information that has been previously stored and annotated is being played back. Again, the Office Action fails to make any specific finding on what components of Nelson and/or King such limitations would read on. For the sake of argument, assume that the Final Office Action pointed to the fact that in Nelson, a meeting summarization may be created from stored data based upon the annotation data, that is, based upon the properties of the annotation data. This still would not reasonably teach or suggest to one of ordinary skill in the art the specific limitations added by claim 18 regarding *detecting a reference to stored annotation information in the index file, and retrieving annotation information associated with the reference, and selectively combining the annotation information and the media information.* Even though Nelson indicates that the virtual pointer functionality leaves a track that may be recreated for future use, and the annotation management system tracks the events occurring during the meeting with respect to annotation/virtual pointer data and that these events may be used to provide a detailed summary of the tracked events made during the meeting, this does not teach or suggest the playback features recited in Appellant's claim 18 that focus on *an index file that has been modified to contain a reference to stored annotation information.*

VIII. CONCLUSION

Appellants respectfully submit that, in view of the foregoing, the Board of Patent Appeals should overrule all of the rejections in the Final Office Action.

Applicant submits herewith the official fee of \$500.00 to cover the cost of filing the opening brief as required by 37 C.F.R. § 1.17(f). Please charge any additional amount due or credit any overpayment to deposit Account No. 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

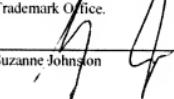
Date: July 23, 2007

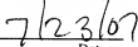

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.


Suzanne Johnson


Date

CLAIMS APPENDIX

Claims 1-15 (Canceled).

16. (Original) A method, comprising:
outputting stored media information based on an associated index file;
receiving an annotation request at a point in the index file;
receiving and storing annotation information associated with the annotation request; and
modifying the index file at the point at which the annotation request was received to reference the stored annotation information.
17. (Original) The method of claim 16, further comprising:
asking for a type of the annotation information before the receiving and storing.
18. (Original) The method of claim 16, further comprising:
detecting a reference to the stored annotation information in the index file;
retrieving annotation information associated with the reference; and
selectively combining the media information and the annotation information.
19. (Original) The method of claim 18, further comprising:
repeating the outputting stored media information based on an associated index file before the detecting a reference to the stored annotation information.
20. (Original) The method of claim 18, wherein the selectively combining includes:
determining whether the annotation information should be displayed, and
combining the media information and the annotation information if the determining determines that the annotation information should be displayed.

EVIDENCE APPENDIX

Memorandum issued April 12, 2007, by Deputy Commissioner John J. Love of the U.S. Patent and Trademark Office (2 pages.

RELATED PROCEEDINGS APPENDIX

None.



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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MEMORANDUM

DATE: April 12, 2007

TO: Technology Center Directors

FROM: John J. Love *[Signature]*
Deputy Commissioner
For Patent Examination PolicySUBJECT: Clarification of Interim Guidelines For Examination of Patent Applications
for Subject Matter Eligibility

Certain inconsistencies have come to my attention in the application of the Interim Guidelines For Examination of Patent Applications for Subject Matter Eligibility, which are set forth in section 2106 of the Manual of Patent Examining Procedure (8th Ed. Rev. 5, Aug. 2006) (MPEP). The situation arises in the context of whether or not a claim is for a practical application of an abstract idea, law of nature, or natural phenomenon. As stated in the Interim Guidelines, a claim is for a practical application of an abstract idea, law of nature, or natural phenomenon when the claimed invention "transforms" an article or physical object to a different state or thing, or when the claimed invention produces a useful, concrete and tangible result. See MPEP 2106, subsection IV.C.2.

Focus on Result

A practical application in this context can be the result itself, and does not require that steps or additional limitations be added to the claim. As stated in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368, 1373, 47 USPQ2d 1596, 1601 (Fed. Cir. 1998):

Today, we hold that the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces "a useful, concrete and tangible result"—a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.

It is the result that should be the focus. If the result has a real world practical application/use, then the test has been satisfied. The claim need not include the uses to which the result is ultimately put, just the result itself. Another example would be an improved method for measuring blood sugar levels in human beings. In this example, the end result is the blood sugar level which is a practical application for diagnostic purposes. Accordingly, reciting the improved method, and the result it achieves—the measurement of the blood sugar level—is all that is necessary for patent-eligibility. The diagnostic steps that occur after the determination of the blood sugar level need not necessarily be present in the claims in order for the claims to be statutory.

Use of Specific Terminology

Another area of inconsistency surrounds the use of the terms such as "determining," "calculating," and similar expressions. Some object to these as not creating a tangible result. Such terms may in fact be sufficient to establish a tangible result. See, e.g., *State Street*, 149 F.3d at 1375, 47 USPQ2d at 1602 (holding the calculation of a number having a real world value and to be a "useful, concrete, and tangible result") and *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 50 USPQ2d 1447 (Fed. Cir. 1999) (holding a method claim including the generation of a message record for an interexchange call to be statutory). The specification should be referred to for a meaning of the terms. See *In re Musgrave*, 431 F.2d 882, 893, 167 USPQ 280, 289 (CCPA 1970) ("[w]e cannot agree with the board that these claims (all the steps of which can be carried out by the disclosed apparatus) are directed to non-statutory processes merely because some or all the steps therein can also be carried out in or with the aid of the human mind or because it may be necessary for one performing the processes to think. . .").